

**CHAPTER NO. 738**

**SENATE BILL NO. 2409**

**By Atchley**

**Substituted for: House Bill No. 2747**

**By Fitzhugh, Brown**

AN ACT to amend Tennessee Code Annotated, Title 8, Chapter 34-37, relative to the Tennessee Consolidated Retirement System.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 8-35-403(c), is amended by deleting the language "prior to the preparation of the employee's first salary payment" and by substituting instead the language "within thirty (30) days of employment with a state-supported institution of higher education having an optional retirement program hereunder".

SECTION 2. Tennessee Code Annotated, Section 8-35-403, is amended by adding the following new subsections at the end thereof:

(e) Any eligible employee who fails to make the election as prescribed in this section shall be a member of the retirement system until such employee makes the election as described in subsection (d) above.

(f) Notwithstanding any provision of this part or any other law to the contrary, any employee who has five (5) or more years of creditable service in the optional retirement program as of January 1, 2005, shall have the option of transferring membership from the optional retirement program to the Tennessee consolidated retirement system under the following terms and conditions:

(1) The employee is employed in a position covered by the Tennessee consolidated retirement system and has not received from such employee's account or accounts in the optional retirement program a cash withdrawal or other distribution that resulted from service rendered to a Tennessee state-supported institution of higher education;

(2) Such election must be made on election forms prescribed by the Tennessee consolidated retirement system and filed with it and with the institution where the employee is employed by no later than December 31, 2005;

(3) Any such transfer shall include both past and prospective membership;

(4) The transfer shall be irrevocable;

(5) The employee must pay to the Tennessee consolidated retirement system the greater of:

(i) A sum equal to the employee's account balances in the optional retirement program that resulted from service

rendered to a Tennessee state-supported institution of higher education; or

(ii) A sum equal to 12.65% of the employee's earnable compensation during the period of such employee's membership in the optional retirement program, plus interest on said amount at the rate provided in § 8-37-214;

(6) The payment required hereunder shall be made in a lump sum to the Tennessee consolidated retirement system by no later than December 31, 2005, and may be funded in whole or in part from amounts transferred from the employee's accounts in the optional retirement program, from other eligible tax deferred retirement accounts or from other funds available to the employee. For the purposes of this subdivision (6), amounts transferred from a tax deferred retirement account shall have the same meaning as that given in § 8-37-214(g)(1). Any difference between the payment required hereunder and the amount transferred from the optional retirement program or a tax deferred retirement account shall be paid to the Tennessee consolidated retirement system within sixty (60) days following the transfer, but in any event not later than December 31, 2005. Notwithstanding § 8-35-111 or any other law to the contrary, if the payment is not funded in whole or in part from amounts transferred from the optional retirement program the employee shall be permitted to retain ownership of such amounts without violating § 8-35-111;

(7) The employee shall have no rights, benefits or privileges in the Tennessee consolidated retirement system until the full amount of the payment required hereunder is received by the retirement system. In the event the employee fails to remit the full amount by December 31, 2005, the employee shall irrevocably lose such employee's right to transfer membership from the optional retirement program to the Tennessee consolidated retirement system hereunder; and

(8) All payments made under this subsection (f) shall be credited to the state accumulation fund pursuant to § 8-37-301 and not to the individual accounts of members in the members' fund.

(g) Notwithstanding any provision of this part or any other law to the contrary, any employee who attains five (5) or more but less than six (6) years of service in the optional retirement program on or after January 1, 2005, shall have the option of transferring membership from the optional retirement program to the Tennessee consolidated retirement system under the terms and conditions specified in subsection (f) above; provided, however, that the election to transfer and the payment required thereunder shall be made not later than one year from the date the employee completes five (5) years of service as a participant in the optional retirement program.


SECTION 3. The provisions of this act shall be subject to the funding being provided in the General Appropriations Act.

SECTION 4. This act shall take effect July 1, 2004, the public welfare requiring it.

PASSED: May 5, 2004



JOHN S. WILDER  
SPEAKER OF THE SENATE



JIMMY NAIFEH, SPEAKER  
HOUSE OF REPRESENTATIVES

APPROVED this 24<sup>th</sup> day of May 2004



PHIL BREDEBEN, GOVERNOR